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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF OREGON

11 SONY BMG MUSIC ENTERTAINMENT, )  
a Delaware general partner- )  
12 ship; BMG MUSIC, a New York )  
general partnership; VIRGIN )  
13 RECORDS AMERICA, INC., a Cal- )  
ifornia corporation; CAPITOL )  
14 RECORDS, INC., a Delaware )  
corporation; and FONOVisA, )  
15 INC., a California corpora- )  
tion, )

16 Plaintiffs, )

17 )  
18 v. )

19 ARTURO ARMAS, )

20 Defendant. )  
21

No. CV-04-1682-HU

OPINION & ORDER

22 Kenneth R. Davis, II  
William T. Patton  
LANE POWELL PC  
23 601 S.W. Second Avenue, Suite 2100  
Portland, Oregon 97204-3158

24 Attorneys for Plaintiffs

25 HAGGERTY, District Judge:

26 Plaintiffs bring this copyright infringement action against  
27 defendant. In their Complaint, plaintiffs allege that they are the  
28

1 copyright owners or licensees of exclusive rights under United  
2 States copyright laws with respect to certain copyrighted  
3 recordings. Compl. at ¶ 11. The copyrighted recordings include,  
4 but are not limited to, the copyrighted sound recordings listed in  
5 Exhibit A to the Complaint. Each of the recordings is the subject  
6 of a valid Certificate of Copyright Registration issued by the  
7 Register of Copyrights. Id.

8 Plaintiffs allege that among their exclusive rights granted to  
9 them under the Copyright Act are the rights to reproduce the  
10 recordings and to distribute them to the public. Id. at ¶ 12.  
11 Plaintiffs allege that defendant, without plaintiffs' permission or  
12 consent, has used, and continues to use, an online media  
13 distribution system to download the recordings, to distribute the  
14 recordings to the public, and/or to make the recordings available  
15 for distribution to others. Id. at ¶ 13. In doing so, plaintiffs  
16 contend, defendant has violated plaintiffs' exclusive rights of  
17 reproduction and distribution. Id. These acts allegedly  
18 constitute infringement of plaintiffs' copyrights and exclusive  
19 rights under copyright. Id.

20 Plaintiffs seek statutory damages pursuant to 17 U.S.C. §  
21 504(c) for defendant's infringement of each of the copyrighted  
22 recordings, plus attorney's fees and costs. Id. at ¶ 15.  
23 Plaintiffs also seek a permanent injunction prohibiting defendant  
24 from further infringing plaintiff's copyrights and ordering  
25 defendant to destroy all copies of sound recordings made in  
26 violation of plaintiffs' exclusive rights. Id. at ¶ 16. The  
27 Complaint contains proposed language for the requested injunction.  
28 Id. at p. 5. Plaintiffs also seek attorneys fees and costs.

1 Although defendant was served with the summons and Complaint  
2 on December 1, 2004, he failed to timely appear. An Order of  
3 Default was entered February 16, 2005. Defendants now move for a  
4 default judgment. I grant the motion.

5 DISCUSSION

6 "[U]pon default the factual allegations of the complaint,  
7 except those relating to the amount of damages, will be taken as  
8 true." Geddes v. United Financial Group, 559 F.2d 557, 560 (9th  
9 Cir. 1977); see also Conetta v. National Hair Care Ctrs., Inc., 236  
10 F.3d 67, 75-76 (1st Cir. 2001) (the prevailing view is that an  
11 entry of default prevents the defendant from disputing the truth of  
12 well-pleaded facts in the complaint pertaining to liability); SEC  
13 v. Wencke, 577 F.2d 619, 622 (9th Cir. 1977) (without any answer in  
14 the record, every well-pleaded allegation in the complaint is  
15 deemed admitted).

16 Based on the allegations in the Complaint which are taken as  
17 true, defendant's liability for copyright infringement is  
18 established. In essence, the allegations establish that defendant  
19 used an online media distribution system to copy the copyrighted  
20 sound recordings listed in the Complaint's Exhibits and then  
21 distributed those recordings to other users of the system. Compl.  
22 at ¶¶ 11-13. Recent circuit court cases establish that these acts  
23 violate the Copyright Act. See In re Aimster Copyright Litig., 334  
24 F.3d 643, 645 (7th Cir. 2003) ("If the music is copyrighted, such  
25 swapping, which involves making and transmitting a digital copy of  
26 the music, infringes copyright. The swappers, who are ignorant or  
27 more commonly disdainful of copyright and in any event discount the  
28 likelihood of being sued or prosecuted for copyright infringement,

1 are the direct infringers."), cert. denied, 540 U.S. 1107 (2004);  
2 A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir.  
3 2001) (individuals who upload and download files from system  
4 similar to one defendant used commit direct copyright  
5 infringement).

6 Section 504(a) of the Copyright Act allows for statutory  
7 damages as provided by subsection (c). 17 U.S.C. § 504(a)(2).

8 Section 504(c) provides that

9 the copyright owner may elect, at any time before final  
10 judgment is rendered, to recover, instead of actual  
11 damages and profits, an award of statutory damages for  
12 all infringements involved in the action, with respect to  
13 any one work . . . in a sum of not less than \$750 or more  
14 than \$30,000 as the court considers just.

15 17 U.S.C. § 504(c)(1).

16 The statute makes clear that plaintiffs may choose statutory  
17 damages in lieu of actual damages. Additionally, plaintiffs need  
18 not prove actual damages to be entitled to an award of statutory  
19 damages. See Columbia Pictures Television, Inc. v. Krypton Broad.  
20 of Birmingham, Inc., 259 F.3d 1186, 1194 (9th Cir. 2001) (plaintiff  
21 may elect statutory damages regardless of adequacy of evidence as  
22 to actual damages and amount of defendant's profits).

23 Courts regularly award minimum statutory damages, or higher,  
24 as part of default judgments in copyright infringement cases.  
25 E.g., Ortiz-Gonzalez v. Fonovisa, 277 F.3d 59, 63-64 (1st Cir.  
26 2002) (affirming award of greater than minimum statutory damages as  
27 part of default judgment); D.C. Comics, Inc. v. Mini Gift Shop, 912  
28 F.2d 29, 35, 37 (2d Cir. 1990) (same).

Here, plaintiffs seek \$3,750 in damages, representing the  
minimum statutory damages provided by the Copyright Act for each of

1 the five infringements alleged in the Complaint. Given that the  
2 request is only for the minimum statutory amount, and is consistent  
3 with what was sought in the Complaint, no additional evidentiary  
4 hearing is required. See, e.g., Ortiz-Gonzalez, 277 F.3d at 63-64  
5 (no hearing necessary, even when greater than minimum amount of  
6 statutory damages awarded); Fed. R. Civ. P. 55(b)(2) (hearing to  
7 determine appropriate damages in default judgment is  
8 discretionary).

9 The Copyright Act also provides for injunctive relief. 17  
10 U.S.C. § 502(a) (court may grant "final injunctions on such terms  
11 as it may deem reasonable to prevent or restrain infringement of a  
12 copyright."). Injunctions may be appropriately included in a  
13 default judgment. See, e.g., Claremont Flock Corp. v. Alm, 281  
14 F.3d 297, 299-300 (1st Cir. 2002) (affirming award of default  
15 judgment and injunction).

16 Plaintiffs allege in the Complaint, and the allegations are  
17 taken as true, that defendant's conduct causes them irreparable  
18 injury that cannot be fully compensated or measured in money and  
19 that they will continue to suffer such injury unless defendant is  
20 enjoined from continuing to infringe plaintiff's copyrights.  
21 Compl. at ¶ 16.

22 The proposed language for the injunction, as asserted in the  
23 Complaint, seeks as follows:

24 Defendant shall be and hereby is enjoined from directly  
25 or indirectly infringing Plaintiffs' rights under federal  
26 or state law in the Copyrighted Recordings and any sound  
27 recording, whether now in existence or later created,  
28 that is owned or controlled by Plaintiffs (or any parent,  
subsidiary, or affiliate record label of Plaintiffs)  
("Plaintiffs' Recordings"), including without limitation  
by using the Internet or any online media distribution  
system to reproduce (i.e., download) any of Plaintiffs'

1 Recordings, to distribute (i.e., upload) any of  
2 Plaintiffs' Recordings, or to make any of Plaintiffs'  
3 Recordings available for distribution to the public,  
4 except pursuant to a lawful license or with the express  
5 authority of Plaintiffs. Defendant also shall destroy  
6 all copies of Plaintiffs' Recordings that Defendant has  
downloaded onto any computer hard drive or server without  
Plaintiffs' authorization and shall destroy all copies of  
those downloaded recordings transferred onto any physical  
medium or device in Defendant's possession, custody, or  
control.

7 Compl. at p. 5; Pltfs' App. for Default Jdgmt at pp. 8-9.

8 Plaintiffs contend that defendant's infringements were  
9 widespread, going well beyond the few representative examples  
10 listed in Exhibit A to the Complaint. See Compl. at ¶ 11; Exh. B  
11 to Compl. Additionally, plaintiffs argue that defendant's means of  
12 infringement (an online media distribution system with tens of  
13 millions of potential users), leaves plaintiffs' sound recordings  
14 vulnerable to massive, repeated, near-instantaneous, and worldwide  
15 infringement. Plaintiffs suggest that because recordings made  
16 available over these systems typically are made available for  
17 further unlawful distribution by the users who download them,  
18 defendant's conduct has subjected plaintiffs' valuable recordings  
19 to ongoing "viral" infringement.

20 Plaintiffs argue that for these reasons, and because  
21 plaintiffs continually create new works, the requested injunction  
22 covers works to be created in the future. Without such language,  
23 plaintiffs' new works would be vulnerable to infringement and  
24 litigation would be required to redress each future infringement.  
25 The weight of authority extending injunctive relief to future works  
26 indicates that it is a standard practice. See, e.g., Princeton  
27 Univ. Press v. Michigan Document Serv., Inc., 99 F.3d 1381, 1392-93  
28 (6th Cir. 1996) (weight of authority supports extension of

1 injunctive relief to future works); Olan Mills, Inc. v. Linn Photo  
2 Co., 23 F.3d 1345, 1349 (8th Cir. 1994) (permanent injunction  
3 included works created in the future); Sony Music Entm't, Inc. v.  
4 Elias, No. CV 03-6487 DT (RCx), 2004 WL 141959, at \*5 (C.D. Cal.  
5 Jan. 20, 2004) (to promote judicial economy and avoid similar  
6 actions in future, court issued injunction against defendant to  
7 future works by plaintiffs and plaintiffs' affiliates as well as  
8 existing works).

9 I agree with plaintiffs that their proposed injunction is  
10 necessary and reasonable to prevent the ongoing and future  
11 violation by defendant of plaintiffs' copyrights.

12 The Copyright Act allows for an award of costs. 17 U.S.C. §  
13 505. The supplemental affidavit of William T. Patton shows that  
14 plaintiffs incurred \$217.50 in costs for the \$150 filing fee and  
15 \$67.50 for service of the summons and Complaint. It is appropriate  
16 to award this as part of the Default Judgment.

17 CONCLUSION

18 Plaintiffs' motion for default judgment (#10) is granted.

19 IT IS SO ORDERED.

20 Dated this 18 day of April,  
21 2005.

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23  
24 /s/Ancer L.Haggerty  
25 Ancer L. Haggerty  
26 United States District Judge  
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